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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Tariffs Implementing
Access Charge Reform

CC Docket No. 97-250
CCB\CPD 98-12

**COMMENTS OF RCN TELECOM SERVICES, INC.
IN SUPPORT OF MCI'S PETITION
FOR PRESCRIPTION OF RATES**

RCN Telecom Services, Inc. ("RCN"), through undersigned counsel and pursuant to the Federal Communications Commission's ("Commission") Rules and the Public Notice establishing a pleading cycle in the above-captioned matter,¹ hereby submits these comments in support of MCI Telecommunications Corporation's ("MCI") Petition for Prescription of Tariffs Implementing Access Charge Reform ("MCI Petition").

INTRODUCTION AND SUMMARY

RCN is a facilities-based competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC"), with operating affiliates that provide telephone, switched access, Internet access, video and high speed data services in New York, Pennsylvania and Massachusetts. RCN affiliates are certified or authorized to provide facilities-based and/or resold local exchange services in Maryland, Delaware, the District of Columbia, and Virginia. RCN began reselling local exchange

¹ *MCI Telecommunications Corporation Petition the Commission for Prescription of Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250, Pleading Cycle Established, DA 98-385 (rel. Feb. 26, 1998).

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service in New Jersey in January 1998 and will soon be operating in the Washington, D.C. metropolitan area. Another RCN affiliate, RCN Long Distance Company (formerly Commonwealth Long Distance Company), has been a long distance service provider since 1992, and is authorized to provide interexchange services in every state except Alaska and Hawaii. RCN submits these comments in support of MCI's Petition based on the difficulties it has experienced as an IXC attempting to recover presubscribed interexchange carrier charge ("PICC") costs imposed on RCN by incumbent price cap LECs.

I. BECAUSE COMPETITION HAS BEEN SLOW IN COMING TO LOCAL EXCHANGE MARKETS, DOWNWARD COMPETITIVE PRESSURES ON ACCESS CHARGES HAVE NOT BEEN REALIZED

As RCN and others have previously argued in the Commission's Access Reform Docket, to the extent that the prices for unbundled network elements and ILECs' interstate access services are based on different pricing methodologies, the regulatory regime favors one provider over another. The Commission relied on just such a disparity in adopting its market-based reform of access charges, counting on the availability of unbundled network elements at cost-based rates to put downward pressure on inflated ILEC access charges.

If we successfully reform our access charge rules to promote the operation of competitive markets, interstate access charges will ultimately reflect the forward-looking economic costs of providing interstate access services. This is so, in part, because Congress established in the 1996 Act a cost-based pricing requirement for incumbent LECs' rates for interconnection and unbundled network elements, which are sold by carriers to other carriers. As we have recognized, interstate access services can be replaced with some interconnection services or with functionality offered by unbundled elements. *Because these policies will greatly facilitate competitive entry into the provision of all telecommunications services, we expect*

that interstate access services will ultimately be priced at competitive levels even without direct regulation of those service prices.²

While RCN generally agrees that competitive markets will help push the prices of goods and services closer to cost-based rates, it is also true that both the Commission and a U.S. Court of Appeals have found that existing access charges include excessive and non-cost elements that cannot be justified as a matter of law, equity or public policy.³ The danger of waiting for emerging competition to push access prices down to costs runs the risks of harming consumers of telephone services in at least two ways. First, it harms consumers through increased prices for long distance telephone service that incorporate the cost of access. Second, it harms consumers to the extent IXC's, such as MCI and RCN, are unable to devote capital and resources to developing their competitive local exchange operations because their funds and resources are tied up in paying above-cost and inflated ILEC access charges.

The Commission has, in numerous ways, acknowledged the fact that competition as envisioned by the 1996 Act has developed more slowly than originally intended. In its Section 271 proceedings, the Commission has consistently found that, to date, the unbundled element and interconnection provisions of the 1996 Act have not been implemented consistent with the pro-competitive provisions of the 1996 Act. For instance, the Commission has found that BellSouth in

² *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, ¶262 (1997) ("*Access Charge Reform Order*") (emphasis added).

³ *See, Access Charge Reform Order* at ¶50; *CompTel v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

South Carolina,⁴ and Ameritech in Michigan,⁵ did not fully implement the competitive checklist with respect to the requirement that they provide nondiscriminatory access to network elements and interconnection, respectively. Given the sluggish pace of opening local exchange markets to competition, RCN agrees with MCI that the Commission must revisit its reliance on market-forces to reduce access charges to cost-based rates.

II. ACCESS CHARGE REDUCTIONS HAVE NOT OFFSET IXCS' PICC AND UNIVERSAL SERVICE CONTRIBUTION COSTS AND ACCESS CHARGES HAVE BEEN INCREASED TO RECOVER A PORTION OF ILEC UNIVERSAL SERVICE CONTRIBUTION COSTS

As an initial matter, RCN notes that the promised \$1.6 billion net access charge reduction of July 1997 has accrued to different IXCs in different ways. AT&T, MCI, and Sprint have all announced a pass through of access charge reductions to their end user customers.⁶ Certainly those IXCs that purchase access service directly from ILECs have seen per minute access rates decrease. However, many IXCs that purchase long distance service from underlying facilities-based carriers have yet to see the pass through of per-minute access charge reductions because their contracts specify a certain rate that will not expire until the contract expires. Nevertheless, regardless of the

⁴ *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418, ¶¶195, 197 (rel. Dec. 24, 1997).

⁵ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶224 (rel. Aug. 19, 1997).

⁶ *IXCs File Data To Demonstrate Long Distance Rate Cuts Exceeded Access Charge Reductions*, Telecommunications Reports, 17-18 (March 9, 1998).

extent a particular IXC's bill has decreased, all presubscribed IXCs are responsible for paying the newly-created PICC.

Furthermore, like all interstate carriers, IXCs must make contributions to the Commission's new universal service fund. However, because the Commission refused to explicitly identify and remove universal service subsidies from access charges, these new contributions are not offset by access charge reductions. Thus, while the Commission envisioned access charge reform that was essentially revenue-neutral for the price cap LEC (absent the increased productivity factor reductions), access charge reform has not been revenue neutral for IXCs, especially resellers. As Commissioner Furchtgott-Roth recently noted in an address to the United States Telephone Association Conference:

Telecommunications rates will have to go up to pay for the new schools and libraries and rural health care programs, and we cannot hide that fact from consumers. Apparently, some believe that the new Universal Service Fund for Schools and Libraries can be funded entirely out of access charge reductions. But I have news for such folks, there is no pot of gold at the end of the access charge rainbow.⁷

To add insult to injury, IXCs must pay not only their own universal service fund assessment, but also a portion of the ILECs' assessment in the form of increased access charges. While ILECs do not have to contribute to the universal service fund on the basis of their interstate access revenues received from other carriers,⁸ they are permitted to pass through a portion of their universal service contribution costs to carriers that purchase interstate access. The pass through of ILEC universal

⁷ *Commissioner Furchtgott-Roth's Address to the National Conference of the United States Telephone Association* (March 4, 1998) (text as prepared for delivery available at <http://www.fcc.gov/Speeches/Furchtgott_Roth/sphfr802.html>).

⁸ *See*, Universal Service Worksheet, FCC Form 457 at line 23.

service contribution costs in carrier access charges clearly perpetuates the existence of implicit universal service subsidies in access charges. Such subsidies must, at the very least, be explicitly identified on the ILECs' access bills. Such explicit identification is consistent with the Commission's admonition that "contributors must be careful to convey information ... that accurately describes the nature of the charge."⁹ Because IXCs are essentially required to subsidize ILECs' universal service contributions, absent explicit identification of the portion of access charges attributable to universal service contribution costs, the Commission has failed to comply with the 1996 Act's directive that universal service contributions be explicit. Explicit identification of universal service pass-through in access charges is therefore necessary to meet the Commission's goal of achieving "no ambiguity regarding the cost associated with the preservation and advancement of universal service."¹⁰

III. UNTIL PICC IMPLEMENTATION ISSUES ARE CORRECTED, ILECS HAVE THE ABILITY TO DRIVE A WEDGE BETWEEN IXCS AND THEIR CUSTOMERS

Developing access charges that permit carriers to recover their costs in a manner that reflects the way in which those costs are incurred was one of the primary objectives of the Commission's *Access Charge Reform Order*.¹¹ However, the Commission's cost-causation principles are breaking down in the implementation of PICCs. IXCs, as well as price cap LECs, should recover access charges in a manner that is consistent with principles of cost causation. In order for an IXC to

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶855 (1997) ("*Universal Service Order*").

¹⁰ *Id.* at ¶854.

¹¹ *Access Reform Order* at ¶¶16, 35.

assign a PICC to the cost-causer, the end user, it must receive accurate and auditable information from the underlying price cap LEC. IXC's do not have accurate line count or line classification information, and must rely exclusively on price cap LECs for such information. The IXC is effectively at the price cap LEC's mercy when it comes to assigning PICC costs to specific customers. The best way to create incentives for price cap LECs to correct PICC implementation problems is to force them to collect PICCs directly from customers. If the price cap LEC is forced to either identify and collect the proper PICC from the customer within the same month the costs are incurred or face loss of the PICC revenue, the Commission can be sure that PICC implementation problems will be resolved.

Although the FCC directed LECs to provide IXC's with information about how many and what type of PICCs they are charging the IXC for each customer,¹² like MCI, RCN has received a wide variety of PICC bills from LECs that do not accurately assign PICCs to specific customers, numbers or lines. Notwithstanding the fact that price cap LECs had over six months notice of the new PICC charge from the FCC, they have failed to amend or adjust their billing systems to provide the information necessary for IXC's to assign accurately PICC costs to customers. Without the receipt of such information in advance, IXC's cannot determine and assess the proper PICC on their end user customers. Furthermore, as MCI points out, even three months after the PICC has been implemented, some price cap LECs are still attempting to bill, or adjusting the bills, for January 1998 PICCs. The Commission should place a limit on price cap LECs' back-billing of PICC

¹² *Access Charge Reform*, CC Docket No. 96-262, Second Order on Reconsideration, FCC 97-368, ¶16 (rel. Oct. 9, 1997) ("*Second Recon Order*").

charges. RCN agrees with MCI that price cap LECs should be required to bill PICC charges within 30 days of the date the costs are incurred.

Price cap LECs' inadequate PICC bills have created confusion not only at the carrier to carrier bill level, but also at the customer to carrier bill level. While RCN has attempted in good faith to properly classify customer lines and impose the corresponding PICC on such lines, through no fault of its own, RCN is bound to misclassify and incorrectly assign PICCs for certain lines.¹³ When customers contact RCN to complain about such misclassifications, RCN typically has no recourse other than to pursue the matter with the price cap LEC. This can be a long and arduous process. Furthermore, even if RCN has yet to receive accurate data from the price cap LEC, since the PICC appears on the customer's RCN bill, any delay in correcting the problem will undoubtedly be attributed to RCN. Price cap LECs should not be permitted to use their billing inefficiencies to drive a wedge between RCN and its customers in this way.

A third major implementation problem concerns the distinction between primary and non-primary residential lines. In its *Access Reform Order*,¹⁴ *Non-Primary Lines NPRM*,¹⁵ and *Designation Order*,¹⁶ the Commission recognized the importance of creating a standardized

¹³ These misclassifications will no doubt be brought to RCN's attention on the basis that the RCN's classification of the customer's line does not comport with the price cap LEC's classification.

¹⁴ *Access Reform Order* at ¶83.

¹⁵ *Defining Non-Primary Lines*, Notice of Proposed Rulemaking, CC Docket No. 97-181, ¶1 (rel. Sept. 5, 1997) ("*Non-Primary Lines NPRM*").

¹⁶ *Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250, Order Designating Issues for Investigation and Order on Reconsideration, ¶¶13-17 (rel. Jan. 28, 1998) ("*Designation Order*").

definition for primary and non-primary residential lines. Yet to date, no uniform, competitively neutral definitions of primary and non-primary lines exist. Based on the principles of cost causation, the most efficient way for an IXC to recover its PICC costs is to assign PICCs to the customers that cause the IXC to incur the PICC bill from the price cap LEC. However, IXCs cannot make such assignment unless and until they receive detailed access bills from the price cap LECs. Therefore, RCN strongly supports MCI's recommendation that price cap LECs be required collect the PICC directly from the consumer until they are able to provide IXCs with auditable access bills that assign primary and non-primary PICCs based on either IXC end user billing accounts or ILEC billing telephone numbers.

RCN also supports MCI's recommendation that a standardized date be adopted for determining which carrier is the presubscribed carrier for a specific line. Without such standardization, there exists a danger that price cap LECs will "game" the system to maximize PICC revenues in any given month or period. Prescription of a standardized "snapshot" date will definitively establish the number and amount of PICCs the price cap LEC is permitted to charge.

Finally, RCN also agrees with Sprint and MCI that the IXC should not be responsible for payment of the PICC in the case where an IXC has terminated its relationship with a customer for non-payment. A customer terminated for non-payment has absolutely no existing relationship with the "presubscribed" IXC. In the absence of a rule which permits IXCs to "de-PIC" such customers, current ***paying*** customers of the IXC will be forced to shoulder the PICC costs of the ***non-paying*** customer. Consistent with the principle of assigning costs to the cost-causer, the FCC should require ILECs to accept de-PICs from IXCs and assess the PICC directly on the end user.

RCN urges the FCC to take swift action to correct these and other implementation problems raised by MCI's Petition.

CONCLUSION

For the foregoing reasons, RCN urges the Commission to reexamine its reliance on competitive market forces to bring access charges closer to cost and to adopt the PICC implementation revisions recommended by MCI.

Respectfully submitted,

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Dated: March 18, 1998

CERTIFICATE OF SERVICE

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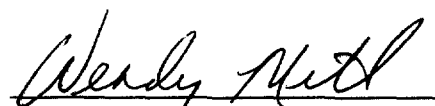
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